



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02534/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 23 July 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

KN  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms P Solanki, Counsel instructed by Tamil Welfare Association  
(Romford Road)

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth 14 October 1969, appealed against the Respondent's decision dated 28 March to refuse an asylum claim and a protection claim under the Refugee Convention and/or the Immigration Rules. His appeal came before First-tier Tribunal Judge Telford (the Judge), who, on 16 May 2018,

promulgated his decision in which he dismissed the Appellant's claims under the Refugee Convention, Humanitarian Protection and Articles 2 and 3 ECHR grounds as well as dismissing the appeal under the Immigration Rules and Article 8 ECHR.

2. The gravamen of the complaints, which are coherently set out in the grounds of appeal, I summarise very shortly:- the Judge failed to properly consider and apply the evidence to the claims being made, failed to properly take into account *sur place* activities and had failed to take into account the implications of his activities in relation to events back in Sri Lanka relating to his family. It was also said that the Judge failed to properly address the Appellant's mental health and wellbeing, in particular the medical evidence relating to those issues. For some reason, sadly, on the hearing date, the Judge became unwell and further written submissions were provided by Ms Solanki in order to assist the Judge given the truncated hearing that had taken place. Those written submissions helpfully encapsulated much of the evidence that was relied upon by the Appellant, pointing out where the evidence was found and the nature of the case law and the issues raised.
3. For my purposes it is sufficient to say that the Judge's analysis of risks in Sri Lanka, if the Appellant was to return, and the assessment of the *sur place* activities by themselves fall short of providing adequate and sufficient reasons. In addition, the analysis of documentation which was provided left much to be desired of in terms of a fair and reasoned assessment.
4. The criticism made vis a vis medical evidence in the assessment with reference to the case of Mibanga [2005] EWCA Civ 367 may not really be sustainable but for these purposes it is not necessary to resolve that matter today.
5. In the circumstances I am satisfied that there was a good deal of evidence about the Appellant's mental health which did need to be addressed and, even if it did not cross the threshold to engage Articles 3 or 8 of the ECHR, the fact is that the Judge's assessment of those matters was really wanting and somewhat dismissive irrespective

of the weight that should be given to them was an issue affecting the implications of return and how the Appellant would cope. In the circumstances it seemed to me that the Original Tribunal's assessment of credibility and the findings of fact he made simply could not stand and there is no point in trying to preserve any of those matters.

6. There are findings and conclusions reached by First-tier Tribunal Judge Wright at an earlier date which fall to be considered in the context of the case of Devaseelan on any remaking will still have to be addressed. It is further an important criticism that the Judge simply did not properly address the country guidance which, whilst somewhat long in the tooth, still has particular relevance in current times.

## **DECISION**

The Original Tribunal's decision cannot stand. The matter will have to be remade in the First-tier Tribunal. No findings of fact to stand.

## **DIRECTIONS**

- (1) Return to the First-tier Tribunal at Hatton Cross, not before First-tier Tribunal Judge Wright or Judge Telford.
- (2) List for hearing - 3 hours.
- (3) Tamil interpreter required.
- (4) Number of witnesses to be notified and particulars given to the Secretary of State if non-UK nationals are being called to give evidence.
- (5) The Appellant to provide any further evidence relating to his medical health, *sur place* activities or aspects of his protection claim not later than 10 working days before the further hearing of his case.

- (6) Any further directions to be obtained in the First-tier Tribunal as and when necessary.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 August 2018

Deputy Upper Tribunal Judge Davey